

Message Text

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PAGE 01 STATE 060183

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SUBJECT: FIGUERERO QUERY ON MNC ISSUES IN OAS

REF: FELDMAN-GANTZ TELECON, MARCH 17, 1975

FOR DEPUTY LEGAL ADVISER FELDMAN FROM L/ARA DAVID GANTZ

1. IN HIS CONVERSATION WITH YOU MARCH 17 AMBASSADOR FIGUERERO WAS REFERRING TO DOCUMENT ENTITLED "CONCEPTS OF COOPERATION FOR DEVELOPMENT" TAKEN NOTE OF BY THE SECOND SUBCOMMITTEE OF THE SPECIAL COMMITTEE FOR RESTRUCTURING OF THE INTER-AMERICAN SYSTEM REPRODUCED AS ANNEX IV OF THE SECOND SUBCOMMITTEE'S 18 FEBRUARY RAPPOREUR'S REPORT (CEESI/SUBCOM. II/DOC. 92/75 REV. 2, BEING POUCHED TODAY). (REPORT WILL BE PRESENTED TO OASGA IN MAY FOR POSSIBLE LIMITED OFFICIAL USE

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PAGE 02 STATE 060183

FURTHER ACTION.) RELEVANT PARAS OF THAT DOCUMENT READ

AS FOLLOWS:

QUOTE N. FOREIGN PRIVATE INVESTMENT SHOULD BE SUBJECT TO THE LEGISLATION AND TO THE JURISDICTION OF THE COMPETENT NATIONAL COURTS OF THE RECIPIENT COUNTRY AND SHOULD CONFORM TO THE DEVELOPMENT STRATEGY ADOPTED BY THAT COUNTRY.

O. TRANSNATIONAL ENTERPRISES SHOULD BE SUBJECT TO

LEGISLATION AND TO THE JURISDICTION OF THE COMPETENT NATIONAL COURTS OF THE COUNTRIES IN WHICH THEY CARRY ON THESE ACTIVITIES AND SHOULD CONFORM TO THE DEVELOPMENT POLICY OF THOSE COUNTRIES. END QUOTE.

ACCORDING TO REPORT (PAGES 7 AND 8) SECOND SUBCOMMITTEE SIMPLY TOOK COGNIZANCE OF WORKING GROUP REPORT WITHOUT NECESSARILY APPROVING OR DISAPPROVING. HOWEVER, US DELEGATION WAS INCLUDED IN WORKING GROUP AND APPARENTLY CONCURRED IN APPROVAL LANGUAGE IN TEXT (SOME OF WHICH DRAFTED BY PREVIOUS SESSIONS.) USDEL HAD MADE GENERAL RESERVATION TO EFFECT THAT "CONCEPTS ALREADY APPROVED ARE STILL SUBJECT TO REVISION AT SUBSEQUENT STAGES." (SEE P. 103.) YOU MAY WISH TO TELL FIGUERERO THAT US VIEWS THIS AS VERY PRELIMINARY DOCUMENT THAT LACKS THE BALANCE WHICH WOULD BE REQUIRED TO MAKE IT ACCEPTABLE TO USG. THERE WAS NO INTENT TO CHANGE OUR POSITION ON CALVO CLAUSE OR RELATED ISSUES, OR TO MISLEAD LATINS REGARDING SUCH A CHANGE.

2. SECOND SUBCOMMITTEE ALSO HAD BEFORE IT ADDITIONAL DOCUMENT ON COOPERATION FOR DEVELOPMENT PRESENTED BY WORKING GROUP COMPRISED OF UNITED STATES, PERU AND URUGUAY (APPENDIX V OF REPORT; SEE ALSO PAGES 8-10). THIS DOCUMENT WAS EXTENSIVELY DISCUSSED WITH L, AND L'S SUGGESTIONS ON KEY PARAS WERE ACCEPTED. THUS PARA 3 ON PERMANENT SOVEREIGNTY, AND PARAS 9 AND 10 ON FOREIGN INVESTMENT AND MNCs, REFLECT THE REQUIREMENT THAT STATES FULFILL THEIR INTERNATIONAL OBLIGATIONS. SUBCOMMITTEE DID NOT HAVE TIME TO CONSIDER THIS DOCUMENT; IT SIMPLY TOOK NOTE OF IT AND TRANSMITTED IT AS WORKING DOCUMENT TO OASGA (SEE PAGE 9).
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PAGE 03 STATE 060183

US HAS CONSISTENTLY RESERVED ON QUESTION OF CONVENTION ON THIS SUBJECT. AFTER REVIEWING THIS DOCUMENT YOU MAY WANT TO SEE THAT FIGUERERO HAS A COPY AND INDICATE TO HIM THAT THIS, RATHER THAN THE OTHER, REPRESENTS CURRENT US THINKING AND INDICATES THE TYPES OF COMPROMISES WE WERE TALKING ABOUT DURING OUR JANUARY TNE MEETING. INGERSOLL

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